In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1304

GEAUGA PLASTICS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A28–A30) is reported at 404 F. 2d 1382. The Board's decision and order (Pet. App. A15–A27) are reported at 166 NLRB No. 69.

JURISDICTION

The decree of the court of appeals was entered on December 11, 1968, and a petition for rehearing was denied on January 23, 1969 (Pet. 2). The petition for a writ of certiorari was filed on April 23, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the petitioner discriminated against one of its employees because of her union activity.

STATUTE INVOLVED

The revelant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities * * *.
>
> SEC. 8.(a) It shall be an unfair labor practice for an employer—
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> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
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> * * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.
>
> * * * * *

STATEMENT

In July 1965, the Union[1] began a campaign to organize the Company's employees (J.A. 172a).[2] Lorma

[1] United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO.

[2] "J.A." references are to the Joint Appendix printed by the parties in the court below.

Jean Iiams, an employee in the Molding Department, was the first employee solicited by the Union, and subsequently became an active organizer on its behalf, who personally urged approximately 50 or 60 employees to join the Union and sign cards (J.A. 181a; 15a–16a). Her activity on behalf of the Union was common knowledge around the plant, and on at least one occasion was brought to the attention of Company foreman Bell by another employee (J.A. 191a and n. 1; 38a, 39a, 72a–73a).

On August 10, shortly after the Union filed an election petition with the Board,[3] Iiams, who had never received a reprimand in her three years of employment with the Company, was unexpectedly and without explanation transferred to an entirely different job (J.A. 181a–182a, 186a, n. 8; 17a–18a). She worked at this job for about two months, but during the course of the next month was "switched around from molder to molder" (J.A. 182a; 18a).

Iiams was later transferred out of the Molding Department because of an arm injury, and was sent to the Finishing Department (J.A. 182a; 18a–19a, 32a). There, general foreman Arbogast requested the assistant foreman of the department to transfer Iiams more frequently than other employees,[4] and to give her more difficult job assignments (J.A. 182a, n. 2; 34a–35a). Accordingly, Iiams was principally assigned to trim a "Hercules" gasket, which is very heavy and

[3] The election was held on October 6, and the Union lost by a vote of 70 to 52 (J.A. 172a).

[4] The employees were transferred from one job to another on occasion because of production requirements.

hard to work with (J.A. 182a; 124a–125a). About a month after her transfer to the Finishing Department, she was reprimanded and summarily suspended for three days for improperly trimming another kind of gasket; in the past such faulty gaskets had been shipped out without reprimand or, at most, sent back to be retrimmed (J.A. 182; 19a, 31a, 86a, 92a, 101a).

Shortly thereafter Iiams was given the task of punching hard and soft gaskets (J.A. 183a; 19a, 81a). The quality control inspector reported that some of the gaskets Iiams had punched were faulty, because a piece of plastic had become lodged in her machine (J.A. 183a; 27a). The foreman did not check the gaskets on Iiams' desk; instead, he checked some which her partner had inspected and packed in a box with her own inspection slip (J.A. 183a; 81a, 94a, 101a, 104a–105a). Finding some of these gaskets to be incorrectly punched, he instructed Iiams to fill out a report for the office (J.A. 183a; 94a, 104a–105a). When Iiams came to the office at the end of the day with her report, the foreman summarily suspended her for a week without looking at the report (J.A. 183a; 20a, 105a).

When Iiams returned to work, she was again reassigned, this time to the difficult and tedious task of mitering gaskets (J.A. 183a; 21a, 121a, 122a). Mistakes on this job were frequent, and assistant foreman Haygood admitted that he had himself cut the gaskets too short on one occasion. Nonetheless, when he discovered that Iiams, who had been performing the job for only a few hours, had cut some gaskets short, she was immediately reassigned to another job. And at

the end of the day she was again suspended for a week, with a warning that the next time she made this mistake she would be fired (J.A. 184a; 22a–23a, 37a). Iiams protested that she did not think the mistake was her fault, because the Company had always experienced difficulty with that particular operation, and observed that the Company was giving her the hardest jobs it could find (J.A. 184a; 22a–23a). Foreman Arbobast responded, "Yes. Why don't you quit?" (*ibid.*).

Iiams returned to work a week later, and on her fourth day of work was again reassigned, to work on an IBM gasket (J.A. 184a–185a; 23a–24a, 76a). This work was generally done by Starcher, who would do the cutting and notching of the gasket, and Clary, who would do the stapling (J.A. 185a; 23a, 76a–79a). Iiams was shown how to perform Starcher's job, and she and Clary worked together for about an hour (J.A. 185a; 24a). Then, foreman Arbogast came over, showed Iiams how to do Clary's job, and ordered the employees to exchange jobs (J.A. 185a; 24a, 76a–77a). Although Arbogast checked Iiams' work several times during the remainder of the day, and appeared to be satisfied with her performance, he told her on the following morning that she had stapled 80 gaskets out of 450 incorrectly, and that she was fired (J.A. 185a; 24a–25a, 78a, 114a–115a).

The Board found that the Company transferred, suspended, and ultimately discharged Iiams, not because of her work deficiencies, but because of her union activity, and thus violated Section 8(a) (3) and (1) of the Act. In so finding, the Board relied upon

the entire record, including Iiams' uncontradicted testimony that general foreman Arbogast had admitted giving her the hardest jobs he could find and the union animus reflected by the Company's other unfair labor practices.[5] (Pet. App. A21–A24.) The Board ordered the Company, *inter alia*, to reinstate Iiams to her former or equivalent position, and to make her whole for any loss of earnings suffered as a result of the Company's unlawful action (Pet. App. A26). The court of appeals sustained the Board's findings and enforced its order (Pet. App. A28–A30).

ARGUMENT

The petition presents only a contention that the Board erred in finding that the Company's treatment, suspension, and ultimate discharge of Iiams were motivated by her union activities, rather than by her work deficiencies, as urged by the Company. Such an evidentiary issue does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491. In any event, the evidence before the Board amply supports its findings that the reasons advanced by the Company for its action against

[5] The Board found that the Company had established a plant committee to deal with layoffs and grievances, in violation of Section 8(a) (2) and (1) of the Act, and that it had interrogated its employees about their union activities, made unlawful promises of benefit, and created the impression that the employees' union activities were under surveillance, in violation of Section 8(a) (1) (Pet. App. A3–A8). The Company does not challenge these findings here.

Iiams were pretexts, and that the real reason for that action was her active union involvement.[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
ABIGAIL COOLEY BASKIR,
Attorney,
National Labor Relations Board.

MAY 1969.

[6] In reversing the Trial Examiner's contrary conclusion, the Board accepted his credibility determinations, but drew different inferences from the evidence in the record. The Board was entitled to do so. *Oil, Chemical and Atomic Workers* v. *National Labor Relations Board*, 362 F. 2d 943, 945–946 (C.A.D.C.).

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